

106 KAR 1:091. Kentucky Emergency Response Commission (KERC) fee account grant requirements for Local Emergency Planning Committees (LEPCs).

RELATES TO: KRS 39E.040, 39E.050, 39E.110, 39E.130, 39E.140, 39E.150, 39E.160, 39E.170, 39E.220, 39E.230, 61.800, 61.805, 61.810, 61.820, 61.823, 61.826, 61.835, Chapter 424, 40 C.F.R. Part 355, Appendix A, Appendix B, 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39E.040, 39E.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the KERC to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes criteria and procedures to be met by LEPCs requesting funds generated by KRS 39E.050.

Section 1. Definitions. (1) "Extremely Hazardous Substance Facility Emergency Response Plan" or "EHS Facility Emergency Response Plan" means an emergency response plan for a facility subject to SARA Title III (Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. 11001 et seq., that:

(a) Has in its inventory an EHS above Threshold Planning Quantity (TPQ); and

(b) Meets all required planning elements of SARA Title III, 42 U.S.C. 11003, KRS 39E.110, KRS 39E.130, KRS 39E.140, KRS 39E.150, KRS 39E.160, KRS 39E.170, KRS 39E.220, and the KERC's planning requirements found in the Responsibilities of the LEPC Course: Manual (KERC Document 715-RL), incorporated by reference in 106 KAR 1:081.

(2) "EHS (Extremely Hazardous Substance) Facility Emergency Response Plan Checklist" or "KERC Form: 303-PC" means the checklist completed by all LEPCs and submitted to the KERC EHS Planner for all EHS Facility Emergency Response Plans requiring submission to the KERC for approval and in accordance with the Responsibilities of the LEPC Course: Manual (KERC Document 715-RL), incorporated by reference in 106 KAR 1:081.

(3) "Grant Ledger" or "KERC Form: 105-GL" means the form LEPCs are required to use to record all of the checks, cash payments, and outlays of cash in the "(Name of Planning District) Emergency Planning Committee Fee Account" during the calendar year, January 1 through December 31.

(4) "KERC Document Library" or "KERC Document: 001-LIB" means a compilation of documents continually reviewed and updated by the KERC that contains pertinent information for LEPCs.

(5) "LEPC Annual Certification Letter (ACL)" or "KERC Form 302-ACL" means the letter annually submitted by the LEPC listing the status of all EHS Facility Emergency Response Plans in the planning district, which includes information that was received from covered facilities by March 1, for the previous calendar year, and in accordance with all ACL requirements found in the Responsibilities of the LEPC Course Manual (KERC Document 715-RL).

(6) "LEPC Detailed Budget" or "KERC Form: 102-DB" means the form submitted by LEPCs annually identifying by category, all intended purchases and expenses for the upcoming calendar year using, if approved, KERC grant funds.

(7) "LEPC Grant Application" or "KERC Form: 101-GA" means the form submitted by LEPCs initially requesting KERC grant funds in accordance with the Responsibilities of the LEPC: Course Manual (KERC Document 715-RL).

(8) "LEPC Membership Cover Page" or "KERC Form 104-MCP" means the cover letter submitted by LEPCs with their annually required submission of an updated membership list that

serves as a checklist, ensuring all representatives required by EPCRA, 42 U.S.C. 11001 through 11050, and KRS Chapter 39E are included within each LEPC membership.

(9) "LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA)" means the application form used by an LEPC to apply for supplemental funds from the KERC, or used by an LEPC to earmark funds from one (1) grant year to the next for an LEPC Additional Funding Allocation Project.

(10) "Personal Property Inventory or "KERC Form: 103-PPI" means the form submitted by LEPCs annually listing all property exceeding \$500 purchased using KERC grant funds.

(11) "Public (Legal) Notice Advertisement" means the template established in Section 7 of this administrative regulation and used by LEPCs to meet the EPCRA, 42 U.S.C. 11001 through 11050, requirements found in Section 324, which require that each LEPC annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted.

(12) "Responsibilities of the LEPC: Course Manual (KERC Document 715-RL)" means the packet, annually updated and published by KYEM, which provides an introductory look at LEPCs including the laws and regulations that govern them, instructions for the request for assistance through the KERC grant funds, and an understanding of the federal and state requirements for EHS Facility Emergency Response Plans.

Section 2. LEPC Eligibility Requirements. (1) To be eligible for financial assistance, LEPCs that have EHS as listed in 40 C.F.R. 355, Appendices A and B, in excess of the TPQ present in their community shall meet all the criteria established in this subsection during the preceding calendar year (January 1 through December 31).

(a) The LEPC shall meet all requirements established in KRS 39E.110.

(b) The LEPC shall have an EHS Facility Emergency Response Plan that has been approved by the KERC pursuant to KRS 39E.110(1)(a), (e) and (f) and 39E.150 as set out in the Responsibilities of the LEPC Course: Manual (KERC Document 715-RL) for each facility in the planning district that has an EHS in excess of the TPQ.

1. The LEPC shall submit a completed EHS Facility Emergency Response Plan Checklist (KERC Form: 303-PC) with all EHS Facility Emergency Response Plans submitted for KERC approval.

2. The LEPC shall submit new EHS Facility Emergency Response Plans to the KERC EHS Planner within sixty (60) days of notification that the facility has an EHS in excess of the TPQ.

3. The KERC EHS Planner shall review new EHS Facility Emergency Response Plans and their accompanying checklists for completeness.

a. Complete plans shall be forwarded to the Chairman of the KERC, or designee, within thirty (30) days of receipt from the LEPC.

b. Incomplete plans shall be returned to the LEPC with recommendations.

(c) The LEPC shall meet at least twice during each calendar year (January 1 through December 31) to conduct its business, and a quorum shall be required. A copy of the minutes shall be provided to the chairman of the KERC, or designee, within thirty (30) days of the date of the meeting pursuant to KRS 39E.110(2).

(d)1. No later than November 30 each calendar year (January 1 through December 31) in accordance with KRS Chapter 424, Legal Notices, the LEPC shall publish public information on LEPC activities in the following year as established in Section 7 of this administrative regulation.

2. No later than December 31, each LEPC shall provide the Chairman of the KERC, or designee, with a photocopy of the legal notice published established in Section 7 of this administrative regulation clearly showing the name of the newspaper and the date of publication.

(e) No later than February 28, the LEPC shall submit the LEPC Grant Application (KERC Form 101-GA) to the KERC LEPC Coordinator. The KERC LEPC Coordinator shall review the grant request form for completeness and conformance to KRS Chapter 39E and KAR Title 106.

(f) No later than November 30 each year, the LEPC shall submit an updated membership list and LEPC Membership Cover Page (KERC Form 104-MCP) to the chairman of the KERC or designee.

(g) No later than November 30 each year, the bylaws of each LEPC shall be provided to the chairman of the KERC or designee, with certification stating that:

1. There were no changes; the bylaws are identical to last year; or
2. The bylaws have been revised and the revisions are included.

(h) The bylaws shall identify the position or person who shall be responsible for accountability for the funds and who shall be listed as the authorized applicant as shown on the Grant Application (KERC Form: 101-GA).

(i) No later than November 30, LEPCs shall submit a Personal Property Inventory (KERC Form: 103-PPI) identifying all property items valued in excess of \$500 purchased using KERC grant funds.

(j) No later than April 1 each year, the LEPC shall review all existing EHS Facility Emergency Response Plans and send an Annual Certification Letter (ACL) to the KERC EHS Planner stating that:

1. There were no changes; the plan is correct as is; or
2. The plan has been revised and the revisions are included with the ACL.

(k) The KERC EHS Planner shall review the ACL and all EHS Facility Emergency Response Plan revisions received from the LEPC for completeness.

1. Complete plans shall be forwarded to the chairman of the KERC or designee no later than May 1 each year.

2. Incomplete plans shall be returned to the LEPC with recommendations.

(l) The LEPC shall provide the chairman of the KERC, or designee, documentation of expenditures, including bank statements, canceled checks, invoices, receipts, and a Grant Ledger (KERC Form: 105-GL) on a quarterly basis. The final due date for submissions of documents from the final quarter of the preceding year shall be no later than January 31.

(m) No later than June 30, local emergency planning committees shall submit a LEPC Detailed Budget (KERC Form: 102-DB) to the chairman of the KERC, or designee, identifying how the funds requested on the LEPC Grant Application are to be spent.

(2) To be eligible for financial assistance, LEPCs that do not have any EHS in excess of the TPQ present in their community shall meet the criteria established in this subsection during the preceding calendar year (January 1 through December 31).

(a) The LEPC shall meet criteria established in KRS 39E.110(1)(b), (c), (d), (2), (4), (5), and subsection (1)(c) and (d) of this section.

(b) The LEPC shall meet at least once during each calendar year (January 1 through December 31) to conduct its business and a quorum shall be required. A copy of the minutes shall be provided to the chairman of the KERC, or designee, within thirty (30) days of the date of the meeting pursuant to KRS 39E.110(2).

Section 3. KERC Grant Review Procedures. (1) The KERC staff, the chairman of the KERC or designee, or the Grant Review Committee may request additional information that shall be provided by the LEPC. Failure to provide the requested information shall invalidate the LEPC's request for funding.

(a) The chairman of the KERC, or designee, shall annually update, publish, and promulgate

all grant requirements in the Responsibilities of the LEPC (KERC Document 715-RL).

(b) The chairman of the KERC, or designee, shall annually review, publish, and promulgate, through incorporation by reference in an administrative regulation, all grant required KERC forms in the KERC Document Library (KERC Document {#}001-LIB).

(2) The schedule of due dates shall be as established in this subsection.

(a) No later than March 30, the KERC LEPC Coordinator shall:

1. Review the grant request form for completeness and conformance to 106 KAR 1:101, Kentucky Emergency Response Commission fee account grant requirements for state agencies, 106 KAR 1:111, Kentucky Emergency Response Commission Fee Account Grant Review Committee, and 106 KAR 1:121, Kentucky Emergency Response Commission fee account grant distribution formula;

2. Note any recommendations; and

3. Forward the items established in subparagraphs 1 and 2 of this paragraph to the Grant Review Committee.

(b) No later than May 30, the Grant Review Committee, with a quorum present, shall review all grant requests and forward recommendations to the KERC for final approval.

(c) No later than July 30, the KERC shall make the grant awards pursuant to this administrative regulation.

Section 4. Requests for Modifications. (1) A modification of a grant award shall be required if there is a change in the grant request or if an LEPC is unable to expend the funds for the purpose for which the grant was awarded.

(a) A request for modification shall be submitted by the LEPC for approval by the commission.

(b) Unexpended monies shall be returned to the KERC fee account fund.

(2) Requests for modifications of grant awards shall be submitted on an LEPC Detailed Budget, KERC Form 102-DB, and, except for due dates, shall be processed in accordance with Sections 2 and 3 of this administrative regulation.

(3) Modifications may be submitted throughout the grant period.

Section 5. Supplemental Grant Awards. (1) In the event supplemental money is available, the KERC shall determine the date of the supplemental allocation award and inform the LEPCs of that date.

(2) Requests for supplemental money shall be submitted on an LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA) and, except for due dates, shall be processed in accordance with this section and Sections 2 and 3 of this administrative regulation.

(3) If the LEPC requests supplemental money, the schedule of due dates shall be as established in this subsection.

(a) No later than thirty (30) days from notification by the KERC of the availability of supplemental LEPC money, the LEPC shall submit the supplemental LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA) to the KERC Program Manager.

(b) No later than thirty (30) days from receipt of the supplemental grant request, the KERC Program Manager shall review the supplemental grant request documents for completeness and conformance to 106 KAR 1:101, Kentucky Emergency Response Commission fee account grant requirements for state agencies, 106 KAR 1:111, Kentucky Emergency Response Commission Fee Account Grant Review Committee, and 106 KAR 1:121, Kentucky Emergency Response Commission fee account grant distribution formula.

1. Complete fund applications shall be forwarded to the Grant Review Committee.

2. Incomplete fund applications shall be returned to the LEPC with recommendations.

(c) Forty-five (45) days from receipt of the supplemental grant request, the Grant Review Committee, with a quorum present, shall review the supplemental grant request in accordance with Section 3 of this administrative regulation and forward their recommendations to the KERC.

(d) No later than thirty (30) days from receipt of the recommendation of the Grant Review Committee, the KERC shall make the supplemental grant award pursuant to this administrative regulation.

Section 6. Requirements for Funding Accountability. (1) Funds provided by the KERC shall be deposited in a separate "(Name of Planning District) Emergency Planning Committee Fee Account" and fiscal accountability shall be prescribed by the state auditor of public accounts. All funds shall be subject to audit by the KERC and the state auditor of public accounts.

(2) Grant awards approved by the KERC may be withheld for noncompliance with KRS 39E.050 and this administrative regulation or for failure to provide required documentation.

(3) All funding allocation decisions shall be made by the KERC and shall be dependent upon availability of fees collected.

(4) Unexpended monies may be carried over into the next grant cycle, if the LEPC has submitted an LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA) and was approved by the KERC.

(a) Once funds have been designated for an LEPC Additional Funding Allocation Project, the LEPC shall not reallocate the funds for alternate purpose.

(b) If an LEPC becomes noncompliant and is therefore ineligible for funding, the LEPC shall be allowed one (1) grant cycle in which to regain compliance.

(c) Failure to regain compliance may result in the KERC requiring that LEPC Supplemental Funding be returned to the KERC Fee Account Fund.

Section 7. Public (Legal) Notice Advertisement Template. (1) LEPCs shall use the template established in this section to comply with EPCRA, 42 U.S.C. 1101 through 11050, and annual requirements established in Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986, 42 U.S.C. 11001 et seq.

(2) Template:

PUBLIC (LEGAL) NOTICE ADVERTISEMENT

_____ COUNTY EMERGENCY PLANNING COMMITTEE

Pursuant to Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986, 42 U.S.C. 11001 et seq., the following information is provided in compliance with the Community Right-to-Know requirements of the SARA Law, and the open meetings and open records provisions of KRS 61.800, 61.805, 61.810, 61.823, 61.826, and 61.835. Members of the public may contact the (name of county) County Emergency Planning Committee by writing (name of chairman), chairman of the (name of county) County Emergency Planning Committee, (working address of chairman or committee), (city), Kentucky (zip code), or contacted by telephone at (area code), (telephone number established by the committee). The (name of county) County Emergency Planning Committee conducts meetings at (name of building), (local address), or at other locations, in accordance with the Kentucky Open Meetings Law. Members of the public may request to be notified of regular or special meetings as provided in KRS 61.820. Records of the Planning Committee, including the county emergency response plan, material safety data sheets, and inventory forms, or any follow-up emergency notices as may subsequently be issued, are open for inspection, and members of the public who wish to review these records may do so (normal hours of business), (Eastern or

Central Time), (days of the week), at (location of the office or place where custodian keeps the committee files), as required by the Kentucky Open Records Law. The local 24-hour telephone number for purposes of emergency notification, as required by the SARA Law, is (emergency number adopted by county planning committee).

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Grant Ledger (KERC Form: 105-GL)", January 2017;
- (b) "Responsibilities of the LEPC: Course Manual (KERC Document 715-RL), 2018";
- (c) "LEPC Annual Certification Letter (ACL) (KERC Form 302-ACL)", January 2017;
- (d) "LEPC Detailed Budget (KERC Form: 102-DB)", January 2017;
- (e) "LEPC Grant Application (KERC Form: 101-GA)", January 2017;
- (f) "LEPC Membership Cover Page (KERC Form 104-MCP)", January 2017;
- (g) "Personal Property Inventory (KERC Form: 103-PPI)", January 2017;
- (h) "KERC Document Library (KERC Document: 001-LIB)", 2016;
- (i) "LEPC - EHS Facility Emergency Response Plan Checklist", 2015; and
- (j) "LEPC Supplemental Funds Application: KERC Fee Account Grant (KERC Form 505-SPA)", January 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8:00 a.m. to 4:30 p.m. (18 Ky.R. 1712; Am. 2325; 2522; eff. 1-27-1992; 22 Ky.R. 606; 898; eff. 10-11-1995; 43 Ky.R. 1224, 1519; eff. 3-31-2017; 45 Ky.R. 2745, 3052; eff. 5-31-2019.)